

FINDING OF EMERGENCY

The Department is adopting, as an emergency, a new regulation governing the establishment of a schedule of fees for environmental laboratories that wish to be accredited under a new National Environmental Laboratory Accreditation Program (NELAP).

The Department is required to promulgate emergency regulations under the provisions of the Budget Act for 2000-2001 (AB 1740, Chapter 52, Statutes of 2000), in provision 2 to Item 4260-001-0001. This statute provides that the Department shall adjust fees that otherwise would not be sufficient to support a fully fee supported program at least at the 95% level. Without the fees set forth in this regulation, the Department's NELAP accreditation program would not be at least 95% supported by fees from the regulated laboratories. Section 100862 of the Health and Safety Code, adopted in Chapter 372, Statutes of 1999, requires that the department adopt regulations that fully support the costs of the NELAP accreditation program.

A delay in implementing the new regulation could result in California's inability to collect fees sufficient to support the NELAP accreditation program. This, therefore, could result in an adverse economic impact on those California laboratories wishing to do business in California and in other states. Without this regulation some California environmental laboratories could be at an economic disadvantage in seeking business with agencies or organizations which now, or in the future, require NELAP accreditation. Under this new regulation, out-of-state laboratories, which have been granted accreditations by another NELAP approved accrediting authority would have to pay the same fees as California accredited laboratories. Under this regulation, then, these out-of-state laboratories will not have an economic advantage in competing with California laboratories, whether or not the California laboratories are functioning under the department's' certification program or under the NELAP accreditation program.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: California statutes govern the certification of environmental laboratories providing analytical data for regulatory purposes in California. These statutes were first adopted in 1988 (AB 3739, Chapter 894), as Chapter 7.5, Division 1, Part 2, Health and Safety Code, Sections 100825 through 100920 (formerly Sections 1010 through 1029). The statutes were amended in 1989, 1991, 1993, 1996, and 1999.

Regulations implementing the California statutes were first adopted as Section 64801 through 64827, Title 22, Division 4, Chapter 19, California Code of Regulations in 1994.

Section 100862, added to the Health and Safety Code (H&SC) by SB 1304 (Chapter 372, Statutes of 1999), specifically requires the establishment of fees to

enable environmental laboratories in California to participate on a voluntary basis in the National Environmental Laboratory Accreditation Program (NELAP). NELAP accredited laboratories are required to fully support the NELAP accreditation costs through fees.

The Budget Act for 2000-2001 (AB 1740, Chapter 52, Statutes of 2000), Provision 2 to Item 4260-001-0001, provides that the department shall promulgate emergency regulations to adjust fees that otherwise would not be sufficient to support a fully fee supported program at least at the 95% level. Without the fees established in this regulation, the Department's NELAP accreditation program would not be supported by fees from the regulated laboratories at the required 95% level.

The Department has been approved by the United States Environmental Protection Agency's National Environmental Laboratory Accreditation Program to be the accrediting authority for the State of California.

California is required to maintain consistency with federal laws and regulations governing certain aspects of the activities of environmental testing laboratories. This proposed regulation change is consistent with the NELAP requirements and is not inconsistent with other related federal requirements.

The National Environmental Laboratory Accreditation Conference (NELAC) is the standard setting body whose standards and procedures serve as the basis for NELAP recognition and requirements. NELAC standards and procedures are specified in United States Environmental Protection Agency publication EPA 600/R-99/08, July 1999. There are no fees specified in the NELAC standards. The NELAC standards in Sections 4.1.6 and 6.2.1, provide that an accrediting authority, where required, shall establish the level and timing of fees to be paid by laboratories. However, California H&SC Code Section 100862 mandates the establishment of such fees to fully support the program.

Specifically, the Department has adopted regulation changes in Title 22, California Code of Regulations, summarized as follows:

Section 64860, in a new Article 16, was adopted to establish a schedule of fees for laboratories applying for NELAP accreditations. The new fees vary depending on the complexities of the fields of testing the laboratory is being approved to conduct. They are intended to reflect the increases in departmental workload costs incurred during the evaluations and oversight of the capabilities of laboratories under the new accreditation program.

AUTHORITY: Sections 100830, 100835, and 100862, Health and Safety Code.

REFERENCE: Section 100825, Health and Safety Code.

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government: No fiscal impact exists.
- B. Fiscal Effect on State Government: Expenditures are included in the FY 2001-02 Budget Bill for item 4260-001-0179.
- C. Fiscal Effect on Federal Funding of State Programs: No fiscal impact exists.
- D. All cost impacts, known to the Department at the time the notice of emergency action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the emergency action: Participation in the National Environmental Laboratory Accreditation Program (NELAP) is entirely voluntary. Laboratories choosing to participate in NELAP would incur the base fee of \$3000 and the appropriate fee for the fields of testing, ranging from \$750 to \$1,800.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None.

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.